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OFFICE OF PETITIONS

In re Application of :
Rabenhorst, et al. :
Application No. 10/796,306 :
Filed: 10 March, 2004 :
Attorney Docket No: :
1135.42578X00/NC36764US :

ON PETITION

This is a decision on the petition under 37 C.F.R. §1.78(a)(3), filed on 18 August, 2004, and supplemented via FAX on 23 September, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 and 35 U.S.C. §365(c) for benefit of priority to prior-filed PCT Application No. PCT/EP02/09619 filed 29 August, 2002 (based upon German Application No. 101 44 308.0 filed 10 September, 2001), and set forth in the corrected application data sheet (ADS) submitted concurrently on 23 September, 2004.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 C.F.R. §1.78(a)(2)(ii). In addition, the petition under 37 C.F.R. §1.78(a)(3) must be accompanied by:

- the reference required by 35 U.S.C. §120 and 37 C.F.R. §1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- the surcharge set forth in §1.17(t); and

- a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, prior-filed PCT application is submitted after expiration of the period specified in 37 C.F.R. §1.78(a)(2)(ii). Therefore, this is a proper petition under 37 C.F.R. §1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 C.F.R. §1.78(a)(3) in that (1) a reference to the above-noted, prior-filed PCT application has been included in an amendment to the first sentence of the specification following the title or corrected ADS, as provided by 37 C.F.R. §1.78(a)(2)(iii); (2) the surcharge fee required by 37 C.F.R. §1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay.

Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §120 and §365(c) to the above-noted, prior-filed PCT application satisfies the conditions of 37 C.F.R. §1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 C.F.R. § 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §120 and §365(c) and 37 C.F.R. §1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

This application is being forwarded to the examiner of Technology Center Art Unit 1632 for appropriate action on the corrected ADS on 23 September, 2004, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §120 and §365(c) to the above-noted, prior-filed PCT application.

Inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Application No. 10/796,306

Inquiries concerning this decision may be directed to John Gillon, Senior Attorney, Office of Petitions at (571) 272-3214.

A handwritten signature in cursive script, appearing to read "Frances Hicks".

Frances Hicks
Petitions Examiner
Office of Petitions

Encl.: Corrected Filing Receipt